IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 284 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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R L PANDIT

Versus

MEMBER SECRETARY

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Appearance:

1. Special Civil Application No. 284 of 1991

MR YN OZA for Petitioner No. 1

MR DG CHAUHAN for Respondent No. 1

MR HL JANI,AGP for Respondent No. 2,2

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CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 10/02/2004

ORAL JUDGEMENT

1. The petitioner in this petition under Article 226 of the Constitution of India has claimed that he is

eligible for promotion to the post of Executive Engineer from the date when his immediate juniors were promoted. It is the grievance of the petitioner that the respondents had kept the departmental inquiry initiated against him pending for inordinately long time and, thus, denied promotion to the petitioner to the post of Executive Engineer. According to the petitioner, by prolonging departmental inquiry, the respondents have indirectly penalised the petitioner by refusing promotion on the ground of pendency of inquiry. It appears that while the petitioner was serving as Dy. Executive Engineer at Radhanpur from 1979 to May 1982, on the allegation that the petitioner committed some misconduct by making excess payment for purchase of sluice valves for differending class. By an order dated 3.3.1986, the petitioner was suspended from service. In December 1986, chargesheet was served on the petitioner. It appears that in August 1987, Inquiry Officer was appointed. Since the inquiry was not proceeding further, the petitioner challenged the order of suspension. This Court, on 20.9.1988, directed the respondents to complete the inquiry on or before 31.12.1988. As the inquiry was not completed, the petitioner filed another petition being Special Civil Application No.668 of 1989. Again this Court, on 11.10.1989, directed the respondents to complete inquiry on or before 7.2.1990. It appears that in the application for extension of time to complete the inquiry, this Court directed the respondents to pay full salary to the petitioner from 7.2.1990. It further appears that by an order dated 14.2.1990, the order of suspension was revoked. By stating the aforesaid facts, the petitioner has filed the present petition.

2. Mr.J.H.Rathod, Under Secretary to the Government of Gujarat has filed affidavit -in-reply inter alia pointing out that as the departmental inquiry was pending against the petitioner, he was not given promotion to the post of Executive Engineer. According to the deponent, in the instant case, procedure pertaining to keeping recommendation of the Selection Committee in a sealed cover was followed and upon conclusion of the inquiry and upon the petitioner being exonerated in the inquiry, final decision with regard to giving promotion would be taken by the competent authority.

3. On behalf of respondent no.1, Mr. Prakashchandra R.Shah has filed affidavit-in-reply today. In para 4 of the said affidavit-in-reply, it is stated as under:

"4. At the outset, I say and submit that the petition is thoroughly misconceived and is

neither maintainable nor tenable in law and deserves to be dismissed.

BECAUSE

(i) The service record of the petitioner was blemish and he was not discharging his duties and functions sincerely, honestly and diligently and he was found involved in various administrative and financial irregularities.

(ii) The petitioner was found guilty of the charges of administrative and financial irregularities and after holding legal and proper inquiry, the petitioner was punished by imposing stoppage of one increment with future effect and ordered to recover Rs. 19,203/- from the petitioner.

(iii) The petitioner has no right to claim promotion to the higher post as a matter of right. As per the directions of this Hon'ble Court, the case of the petitioner was considered by the Departmental Promotion Committee on 30.5.92, 26.2.93 and 23.11.93 for promotion to the higher post, but after considering his Confidential Reports/ Service Record, he was found unfit for promotion.

(iv) The petitioner was promoted on 17.9.1994 as Executive Engineer and on 30.9.1998, the petitioner retired from service on attaining the age of superannuation."

4. After having heard learned Counsel appearing for the parties and after having gone through the affidavits, the following facts emerge:

In compliance with the order dated 3.12.1991 passed by this Court, on 30.5.1992, 26.2.1993 and 23.11.1993, the name of the petitioner was considered by the Departmental Promotion Committee for promotion to the higher post of Executive Engineer. However, after considering the Confidential Reports/ Service Record, the petitioner was found unfit for promotion. On 16.9.1994, the meeting of DPC was held and as per the directions of this Court, the name of the petitioner was considered for promotion and accordingly by an order dated 17.9.1994, the petitioner was provisionally promoted to the post of Executive Engineer (Civil) subject to the result of Special Civil application No. 5821 of 1989 and subject to the result of departmental inquiry.

5. In the departmental inquiry, the petitioner was

found guilty of the charges levelled against him and the petitioner was punished by an order dated 20.3.1997 by imposing punishment of stoppage of one increment with future effect and it was further ordered to recover a sum of Rs. 19,203/- from the petitioner.

6. During the pendency of the petition, on 30.9.1998, the petitioner attained the age of superannuation and accordingly by an order dated 28.9.1998, the petitioner was retired from service on attaining the age of superannuation.

7. In view of the above factual position, in my opinion, nothing further is required to be done in the matter inasmuch as the petitioner was promoted to the post of Executive Engineer on 17.9.1994 and thereafter he retired from service with effect from 30.9.1998. The case of the petitioner was considered by the DPC in the year 1991-92, 1992-93 and 1993-94 and since he was found unfit for promotion, he was not granted promotion to the higher post. Therefore, the relief claiming deemed date and arrears of difference of salary etc. and other consequential benefits cannot be granted to the petitioner.

8. In view of the above, I see no merit in this petition. Hence it is dismissed. Rule is discharged with no order as to costs.

(Kshitij R.Vyas,J.)

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